MONTANA LEGISLATIVE HISTORY

Chapter 313 1999

Bill H _____ S 367 Original bill & history ✓C

H. Committee on Bus & Labor		S. Committee on Bus. & Industry	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/8	✓C	2/12	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/23	✓C	out 2/17	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 367 Introduced by F. Thomas, et al. *LC0910 Drafter: Maly*

Revise and Clarify the Law Governing New Motor Vehicle Dealers, Manufacturers, Distributors, and Certain Other Parties;...

2/02	Introduced and 1st Reading		
2/02	Referred to Business and Industry		
2/12	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	7	0
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	48	0
2/22	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Business and Labor		
3/18	Hearing		
3/23	Committee Executive Action--Bill Concurred as Amended	15	3
3/24	Committee Report--Bill Concurred as Amended		
3/26	2nd Reading Concurred	96	3
3/27	3rd Reading Concurred	99	1
	Returned to Senate with Amendments		
3/30	2nd Reading House Amendments Concurred	50	0
3/31	3rd Reading Passed as Amended by House	49	1
4/01	Sent to Enrolling		
4/06	Returned from Enrolling		
4/08	Signed by President		
4/09	Signed by Speaker		
4/09	Transmitted to Governor		
4/15	Signed by Governor		
4/16	Chapter Number Assigned		
	Chapter Number 313		
	Effective Date: 4/15/1999 - All Sections		

SB 368 Introduced by Depratu *LC0763 Drafter: Kurtz*

Change the Source of Funding for the Highway Patrol from the Department of Transportation's Account in the State Special Revenue Fund to the General Fund;...

11/30	Fiscal Note Needed
1/08	Hearing
2/02	Introduced and 1st Reading
2/02	Referred to Finance and Claims
2/02	Fiscal Note Requested
2/05	Fiscal Note Received
2/06	Fiscal Note Signed
2/09	Fiscal Note Printed
2/15	Hearing
3/01	Revised Fiscal Note Requested
3/01	Revised Fiscal Note Received
3/02	Revised Fiscal Note Signed
3/03	Revised Fiscal Note Printed
3/05	Tabled in Committee
3/26	Missed Deadline for Appropriation Bill Transmittal

Senate BILL NO. 367

INTRODUCED BY Tester (Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as ~~a~~ an independent and separate business, constitutes a component of the

franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services ~~such~~ the new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-204, MCA, is amended to read:

"**61-4-204. Filing agreement -- product liability.** (1) A franchisee ~~must~~ shall, at the time ~~he applies~~ of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of ~~his~~ the written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent

of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of ~~foreign-made~~ foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of ~~foreign-made~~ foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that ~~he~~ the franchisee has filed with the department one ~~such~~ agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer ~~must~~ shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only~~; provided, however, that~~. However, this section ~~shall~~ may not affect the obligations of new motor vehicle dealers to perform ~~such~~ warranty repair and maintenance ~~as~~ that may be required by law or contract. Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer ~~must~~ shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a

published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the submission of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer made a good faith effort to perform the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 12-month period immediately preceding the date on which the dealer was notified of an impending audit.

~~(5)~~(6) The dealer ~~must~~ shall furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 3. Section 61-4-208, MCA, is amended to read:

"**61-4-208. Prohibited acts.** (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in a reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 12, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 386, 2/5/1999
SB 367, 2/5/1999
SB 391, 2/5/1999
Executive Action: SB 123; SB 125; SB126

{Tape : 1; Side : A; Approx. Time Counter : 0}

Closing by Sponsor:

SENATOR MAHLUM closed. Thank you for a good hearing on a unique bill. I would urge a Do Pass. The licenses are an asset of the state and will be managed by the Montana Heritage Commission.

HEARING ON SB 367

Sponsor: **SENATOR FRED THOMAS, SD 31, MISSOULA**

Proponents: **David Bell, Bell Motor Co., Cut Bank**
Bill Underrimer, Selover Buick, Billings
Jim Utterback, Capital Motors, Helena
Steve Turkewicz, MT Autodealers Assoc.
Stuart Doggett, MT Manufactured Housing & RV Assoc.

Opponents: **Steve Blankenship, Ford Motor Co.**
Mona Jamison, General Motors

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, STEVENSVILLE. I bring **SB 367** for your consideration. It primarily does two things. The first thing it will do limits the factory "look-back" period to 12 months for an audit for warranty work and incentive programs. We need to set the rules straight so that it is fair and equitable in Montana between the auto dealers and the manufacturers. Small businesses in Montana have a hard time when they are being dictated to by large manufacturers. The second thing would limit factory ownership of dealerships in Montana to just two situations.

The factories continue to seek ways to reduce their costs and improve their profits. This bill would insure Montana auto consumers the ability to buy their cars locally and be served locally. The factories have stated that it is their desire to reduce their warranty costs. There are three ways to do this. One is to reduce warranty coverage offered by car buyers. However, this is something they don't want because they want to continue to keep good warranty coverage. Secondly, the factories can build cars and trucks better. They have done this and will continue to do so. Thirdly, they could shift those costs to

another source--namely the auto dealers. This bill curbs the last option by limiting the factory's time for auditing warranty work performed by the auto dealers and thus reduces the amount of the charge backs to the dealerships. The issue is not whether the work has been completed or whether the customer has driven away and is very satisfied with the warranty work. The issue is whether the factories can reduce their costs for an unlined "t" or an undotted "i". The bill answers those questions. They can make sure the "t's" and "i's" are crossed and dotted but they have to do that within a 12-month period. The 12-month period also applies to the incentive programs that are offered by the factories to buy a new car.

The second issue in this bill is insuring that Montana consumers will continue to be able to buy cars and trucks from their local community franchised dealers. The factories have shown an unprecedented desire to eliminate franchised dealerships and replace them with factory owned super dealerships. This might be fine in L.A. or New York, but here in Montana, which is sparsely populated and the distances between towns is great, is another question. Our towns only have any one of any one line make. The overwhelming economic power of the factory owned super store would have significant impacts on Montana's community franchised dealerships. This could facilitate the closing of these dealerships with this kind of competition. This would not benefit any consumer. This bill allows for two cases for the factory ownership of dealerships. One is that during a period of transition between owners and dealer development programs. Twenty-seven states have statutes either limiting or prohibiting factory ownership or management of retail car and truck dealerships. We hope you will pass this legislation.

{Tape : 1; Side : A; Approx. Time Counter : 25.6}

Proponents' Testimony:

David Bell, Bell Motor Co., Cut Bank. I will focus on the incentive programs that the manufacturers offer in order to sell their products. This became a big part of our business 20 years ago. These incentives can amount to cash back rebates to the consumer or dealer incentive programs where they offer cash back for selling a certain model. There are low interest financing, lease programs, special interest rebates if you are a member of AARP, American Legion Club, etc. and that is where this whole

system can get complicated. You can stack by combining two or three or more incentive programs on one purchase. To illustrate the complexity of all this, I have my incentive binder. This is a binder for 1998 Chevrolet incentive programs. (It is a three-ring binder approximately six inches deep.) If we claim an incentive that is not eligible and give it to a customer, we get charged back that amount of money. It is a complicated business and absolutely difficult to keep up with all the incentive programs. I also have one tab in the binder that is empty which is where we are supposed to store our lease programs and we have to put those in a separate binder because there are so many. As an illustration, in the last two weeks from January 29 through February 9, I printed off every incentive program that General Motors has issued and that adds to eight business days. This is the stack in the last two weeks. There are 38 separate announcements which comes to about five a day. At the first of the year there were a couple of incentive programs which were originally announced to go from January through March 31. Half way through the program they sent out a revision and said on one model the incentive was eliminated. Another illustration is a program from Pontiac that was issued on January 4, 1999. It was a program for national dealer cash incentives. If we sell a car on the list, the dealer receives a $500 cash incentive. This was to run from January 5 through March 31. There are explanations and details of the program (three pages). Looking at the dollar amounts, you will see an asterisk beside each amount. So you flip over one more page to the back and read that an asterisk indicates "effective through January 31, 1999". When you receive approximately five of these programs a week and they play games, it is a struggle. When they have two years to go back to audit our records, it is a nightmare. If we give a customer a $1,000 rebate and they sign the rebate coupon, but then fail to get them to sign a separate acknowledgment form, that would be charge back under the guidelines of the programs.

Bill Underriner, Selover Buick, Billings. I would like to speak about the warranty part of the bill. The manufacturers have a warranty on their autos that range from three years to 36,000 miles and four years to 50,000 and some even longer. We honor those warranties as an agent for the manufacturers. We do the work in our shops in good faith to the customer and we submit those warranties to the manufacturer to be paid. Once those warranties have been paid, we receive our money. There are 531 different ways that Chrysler can charge you back for a warranty

that you have already let the customer out of the door. At the last warranty audit we had at our dealership, I was charged back over $30,000 for transmissions that were under warranty that were bad. We sent the transmissions back to the factory, and because we did not attach a tag to each one that was in a bulletin that I did not see, they charged back $30,000. And they did receive each one of those transmissions. I can't go back to the customer. I am out that money. I can appeal that but with General Motors there are not a lot of appeals that you can go through. I did do that, but all my appeals were denied because I didn't put those tags on the transmissions. I have an article from the Wall Street Journal that according to Ron Zarella, Chief, North American Operations, improvement in quality and better handling of warranty claims are reducing warranty costs. Mr. Zarella said GM aims to bring warranty costs to 1% to 1.5% of net sales by 2001, down from about 3% earlier this decade. Please limit the time that they can go back and look at our warranty claims to one year.

{Tape : 1; Side : A; Approx. Time Counter : 39.3}

Jim Utterback, Capital Motors, Helena. We sell Ford, Lincoln, Mercury and Toyota products. I would like to address dealer ownership by the factories. I have sold and bought three different dealerships in Montana and you might think that I would be one who would like to be able to sell to anyone. Selling to the factory in my opinion would not be fair. There are shortages of parts and product. A company like Ford which could own a dealership and say they would never do so, would receive more product than we would receive. I get a Lincoln Navigator about one a quarter right now. The stores in Salt Lake get five or six a month. The stores in Salt Lake are owned by Ford right now. There are parts that I can't get and are back-ordered. There is a dealership in Salt Lake City, five times the dealership of any in Montana, with a truck running around Montana selling parts here that we, as Ford dealers, cannot get. It is not fair. Thank you.

Steve Turkewicz, MT Autodealers Assoc. We know the size of Montana. Montana dealers are entrepreneurial and competitive but we have a limited population base. In Montana we sell about 32,000 new cars and trucks. That is a good week in Los Angeles. We don't think it is in the best public interest of Montana to have factory owned dealerships. We have a heritage of seeing

what happens when we have large scale corporate owned entities that are in Montana and serving Montana consumers. I don't want to see the headline that says, "Ford Leaves Town".

Stuart Doggett. MT Manufactured Housing & RV Assoc. I stand in support of this bill. (He made this statement but was unable to get his statement on tape as the tape was being changed.)

{Tape : 1; Side : B; Approx. Time Counter : 0}

Opponents' Testimony:

Steve Blankenship, Ford Motor Co. We thank you for the opportunity to outline our concerns about this bill. The first concern is of the provision in the warranty repair section. We support the 12 month audit of warranty repairs. However, there is a provision that says that we cannot deny a claim if the dealership makes a good faith effort to repair the part. We prefer that they actually fix the part. We will pay dealers to make the actual repair. We are concerned about the 12 month audit period on the incentives. One of the things we try to do is to make sure the customer has received the incentive that they should have. Many times we hear about dealers having incentive problems when a customer will call us and say my neighbor bought a Thunderbird and he got an incentive and I bought a Thunderbird and I didn't. We would like to be able to go back for the two years to reconstruct the situation and make sure they receive the proper incentive. Section 3 of the bill amends the prohibited act concerning the ownership issue. We feel this is politics of fear. In the last two years, dealerships have come under public ownership. This is a new area and we don't know where we are going but I would like to correct one misunderstanding. The Ford retail networks are joint ventureships with dealers. Dealers are the CEO's of these organizations. They are running them with factory money and the plan at this point is that the factories would ultimately sell out their share. We can't run dealerships. We proved that before. We make cars. The problem with this provision is that it limits options for dealers and for companies. This provides that we cannot own any share in a dealership even if it is a minority share. If the dealer wants to sell and has a problem, we can participate to buy out the store and close it down or help in a transition to a larger organization where one of our retail networks could run it. We feel it would be best to hold off on this provision. If you pass

this provision, no one will come to Montana to talk with a dealer to see if a joint venture would be possible.

Mona Jamison, General Motors. I would urge your opposition to this bill. This bill is bad public policy, bad for business and industry and bad for consumers. Please look at page 4 of the bill. We would ask you to consider these changes. On 5, talking about warranty, that would be 30 days from receipt of the claim. That is unreasonable. They should have 30 days to deal with it and 30 days to pay. We do support (B) 12 months on the warranty. On lines 15 to 18, a manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer. . . . .in compliance with the written warranty. This is an unrealistic standard. There should be a duty to fix it. On lines 19-22, this is on the incentive programs. At first the bill was drafted at six months. After a visit with Mr. Turkewicz, they extended it to a year. That is simply not long enough. Sometimes there is fraud and dishonesty and the manufacturers need that time to investigate. I have an article **EXHIBIT(bus35a01)** about a lawsuit against a Montana dealer for forgery and theft on some of these incentives. These things do happen and the proper time is needed. We would like these extended to two years. On Section 4 is the prohibited act. The new language is on page 6 of the bill. The first section in (A) says that the manufacturer cannot own or operate and the big deal is the ownership of the dealership. If a person does not want to sell to a manufacturer, either total or partial, just don't do it. To put into law a provision as to whom you can sell to or not sell to undermines the freewill of Montana citizens. Evidently, the dealers are willing to deny themselves freewill choice from a fear of a change in the national business climate that might be so uncertain. The next section in (B) says, but if we need it temporarily, we can go ahead and do it for one year. In (C), it seems to conflict with (A) because that says you can own but not operate unless that person who is in the venture stands some risk and loss. This section is against a healthy, good business climate. If there are legitimate concerns about a manufacturer coming in and through partial or total ownership hurting other dealers acting uncompetitively or unfairly, address that, but don't address something that hasn't happen here and denies people the opportunity to engage in business in that manner. Here is a story that was in the Sacramento Bee in California **EXHIBIT(bus35a02)** about consumers posing challenge for independent new-car dealers. The first paragraph says it all:

"Independent new-car dealers are becoming an endangered species in the U.S., largely because of a consumer rebellion that is forcing many of them to change or go out of business." What you are doing is to look at the manufacturers as the "bad boys". It is not good to pass bad business laws for Montana and think you are doing it to help consumers. We urge a vote no.

{Tape : 1; Side : B; Approx. Time Counter : 12.8}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked **Mona Jamison** if she were planning to make some amendments to the bill. **Ms. Jamison** said that she would have them ready on Monday at 8:00 a.m.

SEN. SPRAGUE asked **Bill Underrimer** if he felt he was giving up an option as to whom he could sell his dealership to whether it was a partial or total sale. **Mr. Underrimer** replied that his family feels they have a very good business and they could sell their business to someone today. I wouldn't want the competition of a manufacturer and wouldn't sell to one either. Up to this point, the dealers have not had a hard time selling their dealerships.

SEN. DALE BERRY asked **Mr. Underrimer** if there were a manufacturer dealing in Sheridan or even in Laurel, how tough would that make it for you to sell your business. **Mr. Underrimer** said yes, that it probably would, knowing that they could probably get products and parts that he couldn't.

SEN. VICKI COCCHIARELLA asked **Steve Turkewicz** if the only way to have Saturns sold in Montana would be to have a partnership between a manufacturer and private owner. **Mr. Turkewicz** said that is correct. There is service available for Saturns at certain dealers in Montana. We don't have Lexus or Acura in Montana. A Ford representative told him once that there are certain products they don't even want to sell in Montana.

{Tape : 1; Side : B; Approx. Time Counter : 18}

SEN. COCCHIARELLA asked **Mr. Underrimer** to address the same issue. **Mr. Underrimer** said that at the present time he had a Saturn service provider certificate. Under the agreement, he is allowed to fix their automobiles. He has also asked to sell the

automobiles for Saturn and was told that once the factory is up and running and the dealers become profitable, there is a possibility that he would get a franchise for Saturns.

SEN. COCCHIARELLA asked **Ms. Jamison** the same question. **Ms. Jamison** said that General Motors, unlike Ford, has not dealt with the issue of the company ownership issue. If Saturn were to come here and they wanted to partner with you, it would be prohibited. Any portion whether 1% or 99% would be prohibited.

SEN. BEA MCCARTHY asked **Steve Turkewicz** is any of **Ms. Jamison's** amendments would be acceptable. **Mr. Turkewicz** said that at this point it would not be in the best interest of our membership.

SEN. GLENN ROUSH asked **Steve Blankenship** about the warranty issues and if this bill were passed as it is written, would this make the manufacturers raise their prices to help pay for some of the added costs. **Mr. Blankenship** said yes. Warranty costs are passed onto the consumer and are added to the price of the car. Any time they are not able to resolve problems in terms of audits or service that should have been rendered, those costs are just kicked right back into the cost of the car. **SEN. ROUSH** asked about the incentive programs and the statement that sometimes dealers do not pass them on to the consumer. **Mr. Blankenship** said there are instances of fraud and we deal with those separately but it takes a reasonable audit period to find out what is happening and build a case. Usually those cases are settled between the dealer and the manufacturer without bringing in the attorney general.

SEN. BERRY asked **Mr. Blankenship** about the warranty charge backs and specifically about the $30,000 charge back for not having a tag on the transmission. **Mr. Blankenship** said that he did not know but the $30,000 does seem to be a large issue. He felt that was an exceptional thing.

SEN. SPRAGUE asked **Mr. Blankenship** that if it were true that the consumer ends up paying for all the incentives, the gimmicks, the tradeoffs, etc. **Mr. Blankenship** said that all the incentives are designed to be outside the negociated deal. The theory is the customer and the dealer arrive at a price and then the incentive is factored in. The problem that Ford has with these incentives

is that some of the manufacturers send a check to the customer later on. Ford works it out so that money passes from the dealer to the consumer right there so it can be used as part of the down payment.

Closing by Sponsor:

SEN. THOMAS closed. The legislation should stay the way it is written. You should consider it intact. The suggestion of going to two years should not be considered. Fraud is fraud and I don't believe it takes two years to build a case. It is a reasonable public policy to set a separation up of manufacturing versus sales. It should be divided up. We are dealing here with a concentration of economic power and might that is beyond our reach. When that is present, it is good public policy to say we need that separation.

{Tape : 1; Side : B; Approx. Time Counter : 29.6}

HEARING ON SB 391

Sponsor: **SENATOR FRED THOMAS, SD 31 MISSOULA**

Proponents: **Dave Wheelihan, General Manager, MT Electric Cooperative Assoc.**
Doug Hardy, General Manager, Park Electric Cooperative
Terry Holzer, General Manager, Yellowstone Valley Electric Cooperative
Ric Brown, General Manager, Ravalli County Electric Cooperative
Allen Theissen, President, MT Electric Cooperatives Assoc., Great Falls
Ron deYoung, MT Farmers Union, Flathead Electric Cooperative
Ron Ostberg, MT Independent Telecommunications Systems

Opponents: **Jack Haffey, Executive Vice President, Energy Services Div., Montana Power Co.**
Jerome Anderson, Attorney, PP&L of Montana
Gene Meier, Propane & Fertilizer Co., Lewistown

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 2-12-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-12-99
BILL NO. SB 367

*285 894 P.2d 285

271 Mont. 24

STATE of Montana, Plaintiff and Appellant,
v.
[redacted] Defendant and Respondent.

No. 94-359.
Supreme Court of Montana.
Submitted on Briefs Jan. 19, 1995.
Decided April 18, 1995.

Defendant charged with forgery and theft filed motion to dismiss charges for lack of speedy trial. The Seventeenth Judicial District Court, Phillips County, M. James Sorte, J., dismissed action with prejudice, and state appealed. The Supreme Court, Nelson, J., held that defendant's constitutional right to speedy trial was violated.

Affirmed.

1. CRIMINAL LAW ⚖577.10(1)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.10 Factors Affecting Application of Requirements in General
110k577.10(1) In general; balancing test.
Mont. 1995.
Barker test to determine whether defendant's constitutional right to speedy trial has been violated requires balancing of four factors: length of delay, reason for delay, assertion of right by defendant, and prejudice to defendant. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

2. CRIMINAL LAW ⚖577.10(1)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.10 Factors Affecting Application of Requirements in General
110k577.10(1) In general; balancing test.
Mont. 1995.
If delay in trial is found to be presumptively prejudicial to defendant's constitutional speedy trial rights, this triggers further analysis of reason for delay, assertion of right by defendant and prejudice to defendant. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

3. CRIMINAL LAW ⚖577.15(4)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.15 Length of Delay
110k577.15(4) Subsequent to accusation.

[See headnote text below]

3. CRIMINAL LAW ⚖577.16(8)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.16 Relief; Dismissal or Discharge
110k577.16(5) Proceedings
110k577.16(8) Presumptions and burden of proof.
Mont. 1995.
Delay of 298 days from date defendant was charged to date of trial was presumptively prejudicial. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

4. CRIMINAL LAW ⚖577.12(1)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.12 Delay Attributable to Prosecution
110k577.12(1) In general.
Mont. 1995.
Delay resulting from trial court's failure to arraign defendant and to rule on pretrial motions and prosecution's lack of diligence in bringing case to trial was chargeable to state for speedy trial purposes. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

5. CRIMINAL LAW ⚖577.12(1)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.12 Delay Attributable to Prosecution
110k577.12(1) In general.

[See headnote text below]

5. CRIMINAL LAW ⚖577.12(2)
110 ---
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.12 Delay Attributable to Prosecution
110k577.12(2) Deliberate governmental conduct.
Mont. 1995.
"Institutional delay" weighs less heavily on state than does purposeful delay in determining whether defendant's constitutional right to speedy trial has been violated. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

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6. CRIMINAL LAW ⚖577.10(8)
110 ----
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.10 Factors Affecting Application of Requirements in General
110k577.10(8) Delay caused by accused.
Mont. 1995.

Delay caused by defendant's objection to motion to set trial date that merely advised court of its failure to arraign him and to rule on his pretrial motions could not be attributed to defendant. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

7. CRIMINAL LAW ⚖577.7
110 ----
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.7 Duty of prosecution to proceed to trial.
Mont. 1995.

State has duty to move prosecution forward in timely manner. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

8. CRIMINAL LAW ⚖577.10(10)
110 ----
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.10 Factors Affecting Application of Requirements in General
110k577.10(10) Demand for trial.
Mont. 1995.

Defendant sufficiently asserted his right to speedy trial by notifying court of his intent to move to dismiss action on speedy trial grounds at his first appearance, and by filing the motion shortly thereafter. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

9. CRIMINAL LAW ⚖577.16(4)
110 ----
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.16 Relief; Dismissal or Discharge
110k577.16(4) Prejudice or absence of prejudice.
Mont. 1995.

Prejudice to defendant's constitutional speedy trial rights from delay is assessed in light of three interests which speedy trial right was designed to protect: prevention of oppressive pretrial incarceration, minimization of defendant's anxiety and concern, and avoidance of impairment of defense; all three interests are important but most critical interest is impairment of defense. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

10. CRIMINAL LAW ⚖577.16(4)
110 ----
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.16 Relief; Dismissal or Discharge
110k577.16(4) Prejudice or absence of prejudice.
Mont. 1995.

Although defendant was never incarcerated during delay from date he was charged to date of trial, his speedy trial rights were prejudiced, where defendant suffered from anxiety and concern, and records that might have exculpated defendant were lost or destroyed. U.S.C.A. Const.Amend. 6; Const. Art. 2, § 24.

*286 [271 Mont. 25] Joseph Mazurek, Atty. Gen., Mark J. Murphy, Asst. Atty. Gen., Helena, Ed Arnestoy, Phillips County Atty., Malta, for appellant.

[271 Mont. 26] Robert D. Morrison, Morrison Law Firm, Whitefish, for respondent.

NELSON, Justice.

The State of Montana appeals from an order of the Seventeenth Judicial District Court, Phillips County, dismissing the action against the defendant, Larry D. Matthews, for lack of a speedy trial. We affirm.

The State raises three issues on appeal, which we have consolidated into one issue and state as follows:

Was the defendant denied his constitutional right to a speedy trial?

[redacted] is the owner/operator of Delta Ford, a motor vehicle dealership in Malta, Montana. On May 12, 1993, [redacted] was charged by information with six counts of forgery, all felonies, in violation of § 45-6-325, MCA, or in the alternative six counts of felony theft, in violation of § 45-6-301, MCA. The information alleged that [redacted] drafted six cash rebate checks in amounts of $500 or $1000, on the account of the Ford Division-Customer Cash Assistance account. The checks were made payable to the six customers who were entitled to receive the rebates. According to the affidavit in support of the information, [redacted] made the checks payable to the benefit of Delta Ford, and forged the customers' names on the checks without their knowledge or authority. The information alleged that [redacted] purpose was to either defraud the customers of the rebate money, or to defraud the manufacturer.

[redacted] was summoned to appear on the charges on

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The Sacramento Bee
Sacramento, CA
Friday, February 5, 1999
SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2-12-99
BILL NO. SB 367

Consumers pose challenge for independent new-car dealers

By Warren Brown
Washington Post

Independent new-car dealers are becoming an endangered species in the United States, largely because of a consumer rebellion that is forcing many of them to change or go out of business.

Growing consumer demand for faster sales and service – and simplified pricing – have opened the door for huge, publicly traded dealer conglomerates, which are putting the squeeze on smaller stores.

Adding to those competitive woes are moves by auto manufacturers to reduce the clout of retailers and sell directly to consumers.

Some of those moves are subtle, such as Ford Motor Co.'s decision to buy and consolidate dealerships in Tulsa, Okla.; Saturn Corp.'s establishment of the Saturn Retail Corp. to buy and operate privately owned Saturn dealerships; and General Motors Corp.'s plans to take control of $500 million in annual advertising funds once allotted to local and regional dealership groups.

But one direct-sell strategy, announced by South Korean automaker Daewoo Motor Co., is aimed at bypassing traditional dealerships altogether.

Daewoo is turning to the Internet, allowing consumers to buy cars in cyberspace the same way they buy books and compact discs. Success in that endeavor could prove very troublesome to the nation's traditional auto dealers, who are gathering in San Francisco this weekend for an annual meeting of the National Automobile Dealers Association.

"What's driving all of this is that consumers are in complete control of the market," said Mark Rikes, president of the Rikes Group, a Los Angeles-based auto retail consulting firm.

NADA officials concede that their traditional base of dealerships is under fire. They don't argue with the numbers: Fewer but bigger dealerships are selling more cars and trucks than ever. Last year, 22,240 dealers sold 15.5 million cars and trucks in the United States, compared with 31,100 dealers that sold 11.1 million new vehicles in 1963, and 35,000 dealers that sold 7.3 million new models in 1960.

Some 200 traditional franchised dealers closed shop last year. But dealership chains continued to grow – 100 new chains added for a current count of 2,900, according to NADA's figures.

Chain groups account for 40 percent of all U.S. dealerships. And the top 100 dealership groups account for nearly 15 percent of all new-vehicle sales in the country.

The growth of publicly traded dealerships, such as Richmond, Va.-based CarMax, is the direct result of retailers' need to woo consumers who no longer have product brand loyalty or loyalty to local dealerships, Rikes said.

Bigger dealership groups have the financial wherewithal to give consumers what they want, at the prices they want, the way they want it – much better than smaller dealership chains or individual stores operating on smaller sales volumes and profit margins, Rikes said.

For example, Florida-based Republic Industries, which controls 250 dealerships nationwide through its AutoNation USA subsidiary, has the financial muscle to buy large volumes of cars at steep discounts, about $300 per car lower than individual dealerships, according to estimates by Rikes and other analysts.

"They are using that money to raise the cost of competition," Rikes said. "They are increasing amenities for the consumer – putting in new showrooms, offering a variety of services, and sometimes using their discount to offer lower sales prices. Smaller competitors, with less money, now have to do the same thing. It's become a very uneven playing field."

"Clearly, the industry is consolidating," said NADA spokesman Mike Morrissey. "But there will always be a place for the traditional franchised dealer," he said.

Jerry Cohen, president of Jerry's Group, which owns five dealerships in the Washington, D.C., metropolitan area, agrees that meeting consumer needs will help to keep dealers in business. But he said the threat from manufacturers and larger dealership conglomerates is real, and that dealers with the biggest economic muscles will be the ones that survive.

But like many other dealers, Cohen scoffs at the idea that the public will ever buy a car in cyberspace without getting the chance to see, touch, feel or drive it first. "It's a touchy-feely business," he said.

But he said the Internet has helped to bring more buyers to his dealership.

About 60 percent of the nation's dealers have Web sites, but many of those dealers complain that those shoppers are so informed about pricing it's hard to increase profit margins on sales to them.

DATE Feb. 12, 1999

SENATE COMMITTEE ON Bus. & Labor

BILLS BEING HEARD TODAY: SB 386; SB 367; SB 391

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
E.G. Leipheimer	406 543 5254	Discovery Buick	SB367	✓	
Tony M Holzer	(406) 248-3411	Yellowstone Valley Electric Coop	SB391	X	
Ron de Yong		MT Farmers Union	SB391	✓	
Kati G. Kintli	442-1315	MT Taxpayers Assoc	SB386	✓	
Sharon McCann	4699	MT Historical Soc	SB386	✓	
JEROME ANDERSON	449-3118	PP&L MONTANA	SB391		✓
Mona Jamison	442-5581	General Motors	SB367		✓
Mona Jamison	442-5581	Mt. Hist. Soc.	SB386	✓	
Stuart Doggett	442-2164	MT Manufactured Housing & RV Assoc.	SB367	✓	
DOUG HARDY	222-3100	PARK ELECTRIC	SB391	X	
Ron Ostberg	443-1946	Mt. Ind. Telecommunications	SB391	X	
TOM HARRISON	442-6350	MT Cable Tele. Ass.	SB391		X
MAYOR R ADAMS	761-5243	MT ELEC COOP. ASSN.	SB391	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 12, 1998

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 386, SB 367, SB 391

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
WARD SHANAHON	442-8560	MT HIST SOCIETY & FOUND.	386	X	
Ric Brown	961-3001	Ravalli County Elec	SB391	X	
STEVE BALSTER	538-3465	FERGUS ELEC Coop	SB391	X	
MARVIN KIMMET	339-2135	Glacier Elec Coop	SB391	X	
Allen Thiessen	374-3392	MT. ELEC COOPS	SB391	X	
Gene Meier	538-8791	Lewistown propane	SB391		X
Steve Blankenship	916-442-0111	Ford Mo Co	SB367		X
Jim Hitchcock	406-442-6310	Capital Motors	SB 367	X	
Brian Cockhill	406 449-2854	Mt. Hist. Soc Found	SB386	X	
DAVE BELL	406/273/5575	BELL MOTOR CO	SB367	X	
BILL UNDERLANDER	(406)265-2310	SELOVER BUICK	SB 367	X	
Ed Gulbrandsen	406 782 2325	Lightning Ltd	SB367	X	
Rodney Johnson	443-3797	NFIB	SB391		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 17, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 436, 2/12/1999
	SB 437, 2/12/1999
	SB 406, 2/12/1999
	HB 211, 2/12/1999
Executive Action:	SB 367; SB 436
	SB 437; SB 389

{Tape : 1; Side : A; Approx. Time Counter : 0}

become the default provider if they could fulfill the requirements by the PSC. I'm asking you to allow anybody who wants to be a default provider the ability to make an application to the PSC -- don't put it to one person or entity.

{Tape : 2; Side : B; Approx. Time Counter : 8.6}

EXECUTIVE ACTION ON SB 367

Motion: SEN. MIKE SPRAGUE moved SB 367.

Discussion: Motion: SEN. FRED THOMAS moved that SB 367 BE AMENDED.

Discussion: Mr. Bart Campbell, Legislative Assistant, said the amendments **EXHIBIT(bus39a09)** were from Mona Jamison. No. 1 on page 4, line 4, insert "approved or disapproved" for "paid". No. 2 on page 4, line, insert "and if approved, paid within 30 days after approval". That increases that total to 60 days actually. No.3 on page 4, line 9, insert "payment" for "submission" of claim. No. 4 on page 4, lines 15-18, delete Subsection (d) in its entirety and renumber subsequent subsection. No. 5 on page 4, line 21, insert "24-month" for "12-month". No. 6 on page 6, line 4-22, delete subsection (3) in its entirety.

Substitute Motion: SEN. THOMAS made a substitute motion that No. 3 on page 4, line 9, insert "payment" for "submission" be the only amendment to SB 367.

Vote: Motion that SB 367 BE AMENDED by No. 3 only carried unanimously. 7-0

Discussion: SEN. THOMAS said that Nos. 1 & 2 in essence put the burden on the dealer's back to carry the factory for at least 60 days. Nos. 4 & 5 deals with the good faith compliance of the factory's procedures and policies and reverses what is being done about the 12-month look back if it would be changed to 24-months on warranty work. That strikes at the heart of the bill. If there are problems, they should be dealt with as soon as possible while things are fresh in everyone's mind and people are still available and not wait two years. The longer the period of time, the better for the manufacturer.

SEN. BEA MCCARTHY asked about amendment No. 1 and 2. **Steve Turkewicz, MT Autodealers Assoc.,** answered that 60 days would mean from the time it was sent by the dealer. Normally, this is done on a weekly basis. **SEN. MCCARTHY** asked that after it is sent to the manufacturer 60 days would be fine, but after it is approved how long does it take. **Mr. Turkewicz** said most manufacturers, except a few of the imports, pay on a weekly basis.

SEN. VICKI COCCHIARELLA asked if the manufacturer had sufficient time to make payment. **Mr. Turkewicz** said that this bill asks the manufacturer to pay for the parts and technician within 30 days of receipt of the bill from the dealer.

SEN. COCCHIARELLA wanted to know if this bill closes down the possibility of a person starting a franchise with the financial help of a manufacturer. **Mr. Turkewicz** asked the committee to look at Subsection C on page 6, line 15, this allows the factory to come in and start a dealer development program. This has been used historically for diversity purposes such as women without a lot of experience. This subsection provides, in the event of one or two people, etc., they ultimately will be the owners of the dealership. It allows for factory participation with an individual or corporate entity who will ultimately buy out the manufacturer's investment as the entity acquires knowledge, expertise and the capital.

Motion: SEN. MCCARTHY moved that SB 367 DO PASS AS AMENDED. 7-0

EXECUTIVE ACTION ON SB 436

Motion: SEN. THOMAS moved that SB 436 DO PASS.

Discussion: SEN. BEA MCCARTHY said that in Section 3, No. 2 there appears to be no specific training required and this would be opening a market for those who have nothing more than a certificate that was purchased for a price. It is a costly measure that has to be voted on by the public. **SEN. HERTEL** said that it would need some standards, qualifications, etc. and it is too vague.

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 2-17-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

SENATE BUSINESS & INDUST...
EXHIBIT NO. 9
DATE 2-17-99
BILL NO. SB 367

Amendments to Senate Bill No. 367
1st Reading Copy

For the Senate Business and Industry Committee

Prepared by Bartley Campbell
February 15, 1999

1. Page 4, line 4.
Strike: "paid"
Insert: "approved or disapproved"

2. Page 4, line 5.
Following: "dealer"
Insert: "and if approved, paid within 30 days after approval"

3. Page 4, line 9.
Strike: "submission"
Insert: "payment"

4. Page 4, line 15 through line 18.
Strike: subsection (d) in its entirety
Renumber: subsequent subsection

5. Page 4, line 21.
Strike: "12-month"
Insert: "24-month"

6. Page 6, line 4 through line 22.
Strike: subsection (3) in its entirety

- END -

SENATE STANDING COMMITTEE REPORT

February 17, 1999

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 367** (first reading copy -- white) **do pass as amended.**

Signed: Sen J Hertel
Senator John Hertel, Chair

And, that such amendments read:

1. Page 4, line 9.
Strike: "submission"
Insert: "payment"

- END -

Committee Vote:
Yes 7, No 0.

391521SC.sjo

SENATE BILL NO. 367

INTRODUCED BY F. THOMAS, P. SLITER, S. ANDERSON, J. BOHLINGER, R. CLARK, M. COLE, S. DOHERTY, D. GRIMES, L. GRINDE, M. HALLIGAN, D. HARRINGTON, J. HERTEL, G. JERGESON, J. LYNCH, B. MCCARTHY, L. NELSON, K. OHS, B. PAVLOVICH, G. ROUSH, D. SHEA, S. STANG, L. TAYLOR, J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE BILL NO. 367

INTRODUCED BY F. THOMAS, P. SLITER, S. ANDERSON, J. BOHLINGER, R. CLARK, M. COLE, S. DOHERTY, D. GRIMES, L. GRINDE, M. HALLIGAN, D. HARRINGTON, J. HERTEL, G. JERGESON, J. LYNCH, B. MCCARTHY, L. NELSON, K. OHS, B. PAVLOVICH, G. ROUSH, D. SHEA, S. STANG, L. TAYLOR, J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the

franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as ~~a~~ an independent and separate business, constitutes a component of the franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services ~~such~~ the new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-204, MCA, is amended to read:

"**61-4-204. Filing agreement -- product liability.** (1) A franchisee ~~must~~ shall, at the time ~~he applies~~

of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of ~~his~~ the written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of ~~foreign-made~~ foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of ~~foreign-made~~ foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that ~~he~~ the franchisee has filed with the department one ~~such~~ agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer ~~must~~ shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only~~; provided, however, that~~. However, this section ~~shall~~ may not affect the obligations of new motor vehicle dealers to perform ~~such~~ warranty repair and maintenance ~~as~~ that may be required by law or contract. Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer ~~must~~ shall compensate an authorized

dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the ~~submission~~ PAYMENT of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer made a good faith effort to perform the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 12-month period immediately preceding the date on which the dealer was notified of an impending audit.

~~(5)~~(6) The dealer ~~must~~ shall furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 3. Section 61-4-208, MCA, is amended to read:

"**61-4-208. Prohibited acts.** (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in a reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor

vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 18, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Gay Ann Masolo (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 367, SB 482, SB 483, SB 484, SB 485, SB 435, SB 409 (3/3/99)
Executive Action: SB 483, SB 484, SB 485

HEARING ON SB 367

Opening Statement by Sponsor: Senator Thomas, SD 31 introduced SB 367.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 51}

Proponents' Testimony: Dave Bell, Bell Motors of Cut Bank, MT
{Tape : 1; Side : A; Approx. Time Counter : 51 - 98}

Bill Underwriter, Billings area car dealer.
{Tape : 1; Side : A; Approx. Time Counter : 98 - 151}

Steve Turkowitz, Ex. Vice Pres. Montana Auto Dealers Assn.
{Tape : 1; Side : A; Approx. Time Counter : 151 - 226}

Stuart Doggett, Montana Manufactured Housing and RV Dealers.
{Tape : 1; Side : A; Approx. Time Counter : 226 - 240}

Opponents' Testimony: Steve Blankenship, Ford Motor Co.
{Tape : 1; Side : A; Approx. Time Counter : 240 - 296}

Frank Dunn, Ex. Director of GMC Public Relations.
{Tape : 1; Side : A; Approx. Time Counter : 296 - 500}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 26}

Mona Jamison, Alliance of Auto Manufactures. **EXHIBIT(1)**
{Tape : 1; Side : B; Approx. Time Counter : 26 - 118}

Questions from Committee Members and Responses:
Reps. Sliter, Brown, Krenzler, Pavlovich, Tuss, Bitney, Bookout, Trexler, and Simon questions witnesses.
{Tape : 1; Side : B; Approx. Time Counter : 118 - 500}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 500}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 82}

Closing by Sponsor: Senator Thomas closed SB 367.
{Tape : 2; Side : B; Approx. Time Counter : 82 - 199}

HEARING ON SB 482

Opening Statement by Sponsor: Senator Mesaros, SD 25 introduced SB 482.
{Tape : 2; Side : B; Approx. Time Counter : 199 - 243}

EXHIBIT 1
DATE 3/18/99
SB 367

House Business and Industry Committee
SB 367
Proposed Amendments
Submitted by Mona Jamison, Lobbyist for
General Motors Corporation and
Alliance for Automobile Manufacturers

PROPOSED AMENDMENT NUMBER 1

1. Page 4, Lines 18 through and including 21
   Following: Line 17
   Delete: "(d) and the entirety of lines 18 through and including 21

PROPOSED AMENDMENT NUMBER 2

2. Page 4, Line 24
   Following: "to the" on line 24
   Delete: "12-month"
   Insert: "24-months"

PROPOSED AMEMDMENT NUMBER 3

3. Page 6, Lines 7 through and including 25
   Following: [redacted] (3)(a) on line 7
   Delete: the entirety of lines 7 through and including line 25
   Insert: " A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, office, agent, or any representative of the persons or entities listed that owns and operates a new motor vehicle dealership, in whole or in part, in this state, shall not discriminate against any other new motor vehicle dealer in the same line-make in any matter governed by the franchise, including but not limited to, sale or allocation of vehicles or other company products, or the execution of dealer programs or benefits."

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/18/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo			X
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-18-99

BILL NO. SB 367 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P (O) I	Myra Jamison	Helena	GMC + alliance of Montana
(P) O I	Steve Tilakiewicz	Helena	Mt. Auto Dealers Assn
(P) O I	Bill Anderson	Billings	Mt. Auto Dealers Assn.
(P) O I	Dave Bell	Cut Bank	Bell Motor Co
P (O) I	Steve Blankenship	Sacramento Ca	Ford Motor Co.
P O I	Francis N. Dunne	Detroit Mi	Gen. Motors Corp
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 23, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Billie Krenzler (D)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 670, SB 521, SB 501 (3/16/99)
Executive Action: SB 521, HJR 34, SB 501, SB 272, SB 409, SB 410, SB 367

EXECUTIVE ACTION ON SB 367

Motion: REP. SIMON moved that SB 367 BE CONCURRED IN.
Motion/Vote: REP. SIMON moved that SB 367 BE AMENDED. Motion carried unanimously.
{Tape : 4; Side : A; Approx. Time Counter : 269 - 309}

Motion/Vote: REP. SIMON moved that SB 367 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with Bookout-Reinicke, McKenney, and Trexler voting no.
{Tape : 4; Side : A; Approx. Time Counter : 309 - 450}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/23/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler			X
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

HOUSE STANDING COMMITTEE REPORT

March 23, 1999

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 367** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Representative Bruce Simon, Chair*

To be carried by Representative Paul Sliter

And, that such amendments read:

1. Page 4, line 8.
Following: "dealer"
Insert: ", except that a manufacturer of a motor home, as defined in 61-1-130, shall pay any claim within 60 days of receipt from the dealer"

2. Page 4, line 19 and line 20.
Following: the second "dealer" on line 19
Strike: the remainder of line 19 through "perform" on line 20
Insert: "performed"

3. Page 4, line 24.
Strike: "12-month"
Insert: "18-month"

- END -

Committee Vote:
Yes 15, No 3.

651419SC.ham
3/23

AN ACT REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as ~~a~~ an independent and separate business, constitutes a component of the

franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services ~~such~~ the new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-204, MCA, is amended to read:

"**61-4-204. Filing agreement -- product liability.** (1) A franchisee ~~must~~ shall, at the time ~~he applies~~ of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of ~~his~~ the written agreement with a manufacturer and a certificate of

appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of ~~foreign-made~~ foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of ~~foreign-made~~ foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that ~~he~~ the franchisee has filed with the department one ~~such~~ agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer ~~must~~ shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only~~; provided, however, that~~. However, this section ~~shall~~ may not affect the obligations of new motor vehicle dealers to perform ~~such~~ warranty repair and maintenance ~~as~~ that may be required by law or contract. Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer ~~must~~ shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the

manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home, as defined in 61-1-130, shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

~~(5)~~(6) The dealer ~~must~~ shall furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 3. Section 61-4-208, MCA, is amended to read:

"**61-4-208. Prohibited acts.** (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in a reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

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